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2d Session

SENATE

REPORT  
98-417

CIVILIAN AGENCY MULTIYEAR  
CONTRACTING ACT OF 1984

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R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS

UNITED STATES SENATE

TO ACCOMPANY

S. 2300

TO AMEND THE FEDERAL PROPERTY AND ADMINISTRATIVE  
SERVICES ACT OF 1949 TO AUTHORIZE MULTIYEAR CONTRACTS  
IN CERTAIN CASES



APRIL 26 (legislative day, APRIL 24), 1984.—Ordered to be printed

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## CIVILIAN AGENCY MULTIYEAR CONTRACTING ACT OF 1984

APRIL 26 (legislative day APRIL 24), 1984.—Ordered to be printed

Mr. COHEN, from the Committee on Governmental Affairs,  
submitted the following

## REPORT

[To accompany S. 2300]

The Committee on Governmental Affairs, to which was referred the bill (S. 2300) to amend the Federal Property and Administrative Services Act of 1949 to authorize multiyear contracts in certain cases, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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## I. PURPOSE

The purpose of S. 2300, the Civilian Agency Multiyear Contracting Act of 1984, is to improve the effectiveness and efficiency of the Federal procurement process by extending multiyear contracting authority government-wide.

## II. BACKGROUND AND NEED FOR LEGISLATION

Each year, the Federal government spends more than half of its discretionary budget for the procurement of property and services, ranging from weapons systems to janitorial services, from the private sector. Last fiscal year, the dollar value of government contracts exceeded \$175 billion. The Committee strongly believes that significant savings can be achieved through procurement reform.

The Committee's Oversight of Government Management Subcommittee, which has jurisdiction over procurement issues, has taken several steps over the years to promote implementation of significant government-wide procurement reforms. Based on hearings held on "hurry-up" spending in 1979 and 1980, the Oversight Subcommittee worked with the Office of Federal Procurement Policy (OFPP) in developing a policy directive to curtail this wasteful, year-end spending practice. In 1981, the Oversight Subcommittee held hearings on Federal debarment and suspension practices and again worked with the OFPP on a policy directive to establish new, government-wide procedures. Last year, the Oversight Subcommittee drafted two procurement reform bills: The Competition in Contracting Act, which was approved unanimously by the Senate in November, and the OFPP reauthorization bill, which was enacted into law in December.

Another procurement reform, which enjoys widespread support throughout the procurement community, is to extend multiyear contracting authority government-wide. Under the Federal Acquisition Regulation (FAR), effective April 1, 1984, multiyear contracting may be used only when no-year or multiyear funds are available or, in the case of one-year funds, when multiyear contracting is specifically authorized by statute. Presently, the Department of Defense has such statutory contract authority. 10 U.S.C. 2306(g) and (h). Civilian procuring agencies, however, generally do not have multiyear contracting authority and are consequently precluded by fiscal law restrictions—such as the Anti-Deficiency Act (31 U.S.C. § 1341 *et seq.*)—from entering into contractual agreements requiring obligations in excess or in advance of appropriations.

S. 2300, the Civilian Agency Multiyear Contracting Act, which was introduced on February 9, 1984, by Senators William S. Cohen, Charles H. Percy, Carl Levin, and John C. Danforth, authorizes civilian procuring agencies to enter into multiyear contracts, not to exceed five years, when such contracts are determined to be in the Government's best interest. The bill was referred to the Committee on Governmental Affairs and subsequently to its Oversight of Government Management Subcommittee.

The genesis of S. 2300, like most of the Oversight Subcommittee's previous procurement reform proposals, dates back to the Commission on Government Procurement. The Commission was created by Congress in 1969 to study the Federal procurement process and recommend changes to improve its effectiveness and efficiency. In 1972, the Commission submitted its report to Congress with 149 recommendations, including the recommendation to:

Authorize all executive agencies to enter into multiyear contracts with annual appropriations. Such contracts shall



be based on clearly specified firm requirements and shall not exceed a five-year duration unless authorized by another statute.

The General Accounting Office (GAO) agreed with the Commission in a 1978 report, entitled "Federal Agencies Should Be Given Multiyear Contracting Authority for Supplies and Services" (PSAD-78-54), recommending that:

The Congress should enact legislation authorizing general multiyear contracting authority for Federal agencies and provide for the Office of Federal Procurement Policy (OFPP) to develop appropriate criteria to guide the agencies in its use.

The OFPP also endorsed the concept of government-wide multiyear contracting in the Administration's February 1982 proposal for a Uniform Federal Procurement System:

Greater use of multiyear contracts will enhance competition, reduce procurement costs and greatly reduce the paperwork burden of both Government and contractors. It will also permit better planning and help eliminate hurried year-end spending. The benefits of multiyear contracting, which have been demonstrated for long production runs of hardware, are equally applicable to services.

Finally, the President's Private Sector Survey on Cost Control recommended greater use of multiyear contracting in its June 1983 Task Force Report on Procurement:

Overall, we believe that use of multiyear contracting should be expanded in all agencies, consistent with established criteria. Although multiyear contracting is by no means a panacea, we believe that when applied appropriately, multiyear contracting offers substantial cost savings opportunity.

In drafting S. 2300, the Oversight Subcommittee solicited the views of the civilian procuring agencies, contracting associations, and other experts to determine (1) their position on the proposed legislation, (2) the potential advantages and disadvantages of multiyear contracting, (3) the areas where multiyear contracting should be used, (4) the circumstances under which such authority should be used, (5) the impact on competition in contracting, and (6) the impact on small business participation in contracting.

Every one of the responses supports the concept of government-wide multiyear contracting authority. Responses were received from the General Services Administration, Small Business Administration, Departments of Commerce, Housing and Urban Development, Agriculture, Transportation, Energy, Interior, and Labor, the Professional Services Council, the Computer and Business Equipment Manufacturers Association, the Aerospace Industries Association of America, the Electronic Industries Association, the Associated General Contractors of America, the National Tooling and Machining Association, the National Academy of Public Administration, the American Bar Association, and the General Accounting Office.

Given this widespread support throughout the entire procurement community, the Committee believes there is a need to extend multiyear contracting authority government-wide. The Committee also believes that, in many respects, multiyear contracting may be more appropriate for civilian agencies than for DoD, considering the nature of their procurements. Civilian agencies anticipate using multiyear contracting for standard services, such as trash removal, and for certain commercial items, such as typewriters, for which there will always be a need. These recurring, common-use goods and services are not technologically sophisticated, involve no research and development, and consequently do not entail the risks inherent in multiyear contracting for major weapons systems. It is highly unlikely, therefore, that the civilian agencies will ever incur significant cancellation costs, in contrast to the DoD experience. The bottom line is that civilian agencies will obtain benefits from multiyear contracting, similar to those experienced by the Defense Department, but without assuming as great a risk.

The Oversight Subcommittee held a hearing on March 13, 1984, to consider S. 2300. Testifying before the Subcommittee were Donald E. Sowle, Administrator of the Office of Federal Procurement Policy, Ray Kline, Acting Administrator of the General Services Administration, Vico E. Henriques, President of the Computer and Business Equipment Manufacturers Association, William D. Russell, representing the U.S. Chamber of Commerce and the National Council of Technical Service Industries, and Dwight A. Ink, Chairman of the Panel on Deregulation of Government Management, National Academy of Public Administration.

On March 19, the Oversight Subcommittee voted unanimously to report S. 2300 favorably, with technical amendments. On April 9, the Governmental Affairs Committee voted 13 to 0 to report S. 2300 favorably, as amended.

### III. BENEFITS OF MULTIYEAR CONTRACTING

The primary benefits of extending multiyear contracting authority government-wide, according to the Oversight Subcommittee's survey and the testimony received at the March 13 hearing, are reduced costs, improved quality, and increased competition.

#### REDUCED COSTS

Multiyear contracting, used appropriately, provides significant reductions in the cost of procurement resulting from lower contract prices as well as lower administrative expenses.

Donald Sowle, Administrator of the Office of Federal Procurement Policy, estimated that, based on data used within the Defense Department, approximately 15 to 20 percent of civilian agency procurement costs could be saved when multiyear contracting is used. The President's Private Sector Survey on Cost Control estimated that savings of \$1.8 billion could be realized annually through the expanded use of multiyear contracting, which includes savings by the Defense Department as well. Ray Kline, Acting Administrator of the General Services Administration (GSA), testified that GSA could save \$6 million annually in the procurement of administrative services such as janitorial and guard services, and \$90 million

annually in the leasing of automated data processing (ADP) equipment, through multiyear contracting. He estimated that, overall, GSA alone could save up to \$200 million annually.

Reductions in contract price, according to Mr. Kline, "may be derived from increased competition, economies of scale, improved contractor productivity, or a contractor's ability to amortize nonrecurring 'start up' costs." Annual contracts frequently involve "start-up" costs which must be recovered during the year. This has a direct impact on the price of property of services offered to the Government. Under a multiyear contract, such nonrecurring costs could be prorated over the life of the contract, thus reducing the "unit" cost of the work performed and consequently the price offered to the Government.

In some cases, multiyear contracting would allow agencies to take advantage of greater price discounts. For example, GSA recently analyzed the pricing practices of a major ADP equipment vendor and found that the vendor's prices varied significantly based on its customer's ability to commit for multiple-year leases of equipment. Those customers (all commercial) who would commit to a five-year lease were granted discounts ranging from 62 to 75 per cent of the one-year rates. The maximum volume discounts given to those customers who could only commit to a single year were five per cent of the one-year rate. In effect, customers such as the Government who leased equipment for several years, but who could only contractually commit themselves to a one-year lease, have paid as much in two years as other customers pay in five years.

Administrative costs to the Government could also be reduced. For annual contracts, agencies expend a significant amount of time and money to accomplish a variety of contract formation functions, including market research, preparation of solicitations, evaluation of offers, negotiation of price, terms and conditions, and technical analyses. Agencies could reduce their cost of doing business if these administrative activities were performed on other than an annual schedule. The GAO also found in its 1978 report that administrative savings would result from improved operational efficiency through continuity in contract management.

Similarly, multiyear contracting would reduce prospective contractors' administrative costs associated with bid or proposal preparation. According to William Russell, representing the U.S. Chamber of Commerce, government contractors generally have a limitation on the amount of bid and proposal—B and P—costs that can be changed each year as a reimbursement item under cost reimbursable contracts. By competing for larger, more attractive procurements, contractors are able to use B and P funds more effectively. These savings, says Mr. Russell, may be passed on to the Government in the form of lower contract prices.

#### IMPROVED QUALITY

In addition to savings in contract prices and administrative costs, the quality of performance and service from contractors is likely to improve. The GAO stated in its 1978 report that multiyear contracting can improve contractor performance and service by reducing the uncertainty of continued Government business, providing

continuity in the delivery of recurring supply and services needs, and enabling the contractor to maintain a stable, well-trained workforce.

ADP procurement is an area where not only prices, but also the quality, of the product vary based on the buyer's ability to commit to a multiyear lease. According to a February 1984 Government Executive article:

Excellence in technology is not acquired on an isolated year-to-year basis, but within the framework of a multiyear system life. \* \* \* Multiyear leasing offers the means for insuring both state-of-the-art system effectiveness and long-term system support on the Federal side. \* \* \*

If the government expects to get the technological excellence it needs, it must be prepared to give the vendor assurances of a contract which is solid financially and administratively and conducive to the same long-term vendor support expected in the private sector.

Vico Henriques, President of the Computer and Business Equipment Manufacturers Association, testified at the March 13 hearing that multiyear leasing enhances technological excellence by lessening the risk for the contractor and thereby providing greater incentive to invest in productivity measures.

Mr. Kline testified, moreover, that many contracts, particularly those for the provisions of services, experience a "learning curve" phenomenon where a new contractor's performance improves steadily as its workers gain experience with the peculiarities of the Government's work requirements. When annual contracts are required and successive contracts are awarded to different firms, the impact of the initial stages of the performance "learning curve" is felt each year. By using multiyear contracting, this impact is felt only in the initial year of the contract. Subsequent years should experience a sustained level of quality performance.

At its March 13 hearing, the Subcommittee explored the concern that contractor performance might, in fact, decline because the firm has the contract "locked up" for a number of years. From industry's perspective, Mr. Russell stated that performance does not decline during the life of a multiyear contract because the contractor is able to develop management personnel who can move up through the organization and improve performance. From the Government's perspective, Mr. Kline testified that a longer performance period, coupled with reduced contract formation burdens, enables agency personnel to do a better job of administering a Government contract to ensure compliance with its terms. Furthermore, agency personnel may take appropriate action, such as termination for default, if performance proves unsatisfactory.

#### INCREASED COMPETITION

The Committee believes that perhaps the most important benefit of multiyear contracting, which contributes to reduced costs and improved quality, is increased competition in contracting.

Many companies are often unwilling or unable to make significant capital investments for one-year contracts, because it is diffi-



cult to recoup such investments and remain price competitive. Multiyear contracts would make such undertakings more attractive by providing longer periods of assured business in which to recoup capital investments, thereby encouraging more companies to compete for the contract.

An example of an annual procurement which would have been competitive had it been awarded on a multiyear basis involves a GSA contract for converting waste into fuel. The GSA received proposals from firms indicating an interest in contracting with GSA to collect trash from Federal buildings, convert it into refuse-derived fuel, and sell it back to GSA for burning in Federal heating plants. GSA's contracting authority for such a service contract, however, is currently limited to a one-year period. Considering the large front-end investment that would be required for a contractor to acquire the necessary equipment and facilities, potential contractors were unwilling to make such an investment for a one-year contract. According to Mr. Kline's testimony, if multiyear contract authority were enacted, GSA would be able to contract competitively for conversion of waste to fuel, with anticipated savings in cost and energy resources.

Small businesses, in particular, stand to benefit substantially from multiyear contracting. According to the Commission on Government Procurement's report, which Mr. Sowle cited in his statement:

Authorizing all executive agencies to enter into multiyear contracts with annual appropriations will permit small firms to become more competitive for contracts requiring substantial start up costs and capital outlays. Usually such expenditures are more burdensome to small than to big business. The ability to amortize such costs over longer periods should be helpful for small firms in competing for service and support contracts.

In other words, small businesses would now be able to submit offers on multiyear contracts by prorating nonrecurring "start up" costs which, for a one-year contract, would preclude these businesses from competing.

Multiyear contracting could also enhance a firm's financial credibility. Mr. Russell, who testified on behalf of the Chamber of Commerce which represents small business, stated that multiyear contracting benefits small business firms that are having difficulty financing their Government contracts. By extending the Government's commitment to the contractor, multiyear contracting facilitates business loans and can result in more favorable interest rates due to less risk to the lender.

While there was consensus among the witnesses at the March 13, hearing and those who responded to the Oversight Subcommittee's survey that multiyear contracting enhances competition in the year of award, there was also some concern that the number of opportunities to make offers is reduced by the number of years the contract is in effect.

The Committee believes that multiyear contracting, on balance, greatly increases competition in contracting. Although awarding a contract on a multiyear basis necessarily consolidates the number



of contracts otherwise awarded into one, the strength of the contractor's incentive to compete for the multiyear contract, the number of qualified competitors, and the intensity of the competition are all enhanced by the greater size of the multiyear buy. Moreover, if the multiyear contract is awarded on a competitive basis, the whole of the multiyear buy is procured at competitive pricing whereas, under annual contracting, the awards for the second and subsequent years are often *de facto* sole source, with the incumbent contractor exploiting his sole-source position and selling at higher prices than he could otherwise demand.

Furthermore, the Committee believes that virtually all multiyear contracts should be awarded competitively. Only in those circumstances when an agency is able to, first, justify that the Government's interests would be best served by awarding a noncompetitive contract on a multiyear basis and, second, certify that the justification for going sole source would stand throughout the years of the contract, does the Committee believe that a multiyear contract could be awarded noncompetitively. Otherwise, the Committee emphasizes that multiyear contracting should be competitive.

#### IV. PROSPECTIVE USES OF CIVILIAN AGENCY MULTIYEAR CONTRACTING

The Committee found from the Oversight Subcommittee's survey that the prospective uses of multiyear contracting for civilian agencies are varied and numerous.

The General Services Administration anticipates that multiyear contracting could be used for recurring support services, such as janitorial, maintenance and repair of real and personal property, protection, and trash and snow removal services. GSA would also consider using such authority selectively in the procurement of certain common-use supplies and ADP and telecommunications equipment. Multiyear contracting could also be used for small demand items which, when bought in larger quantities, might encourage increased competition.

The Department of Agriculture listed numerous areas in which multiyear contracting would be considered, including shuttle bus service, janitorial services, requirement contracts for items such as back tags for cattle and bleeding needles, food stamp production, ADP services and equipment, telecommunication services and equipment, reforestation projects, road maintenance projects, and construction.

The Department of Interior stated that multiyear contracting may be used for construction programs, research programs, service contracts (such as janitorial and other routine services), management and operating contracts, seedling production and reforestation contracts. Leases of equipment, in appropriate circumstances, would also be considered as possible candidates.

The National Academy of Public Administration put together a laundry list of potential uses, including (1) procurement of services, such as janitorial, maintenance, utilities and a wide variety of building and base operations, (2) lease-purchase arrangements, such as photocopying, communications, and computer equipment, (3) high-volume usage of commercial articles, such as copying

paper, typewriters, other office supplies, and automobiles, and (4) procurement of specially designed equipment or highly specialized capital items where a large investment is required in plant or equipment which could be amortized over several years.

## V. PROVISIONS OF S. 2300

### A. AUTHORIZE MULTIYEAR CONTRACTING FOR CIVILIAN AGENCIES

The Civilian Agency Multiyear Contracting Act, as reported, authorizes civilian procuring agencies to award multiyear contracts—with annual appropriations—provided that specified criteria are met.

The term “multiyear contract” is defined in S. 2300 to mean a contract for the acquisition of property or services for a period not exceeding five years. Under this definition, a multiyear contract could range from a five-year contract to a one-year contract which overlaps fiscal years. The term “acquisition” is used in the definition, rather than “purchase,” to clarify that leasing as well as purchasing would be authorized on a multiyear basis under this bill.

While S. 2300 authorizes civilian procuring agencies to obligate funds in advance or in excess of appropriations, a practice now prohibited by fiscal law restrictions, the actual funding would still be appropriated on an annual basis. The Committee believes that such sequential funding, rather than front funding where appropriations for the entire multiyear buy is provided in the first year of the contract, allows Congress to maintain control over the budget process. Moreover, sequentially funded multiyear contracting authority provides a better balance of benefits and risks between the contractor and the Government by offering the security of assured business with a more limited financial commitment.

The issue was raised at the March 13 hearing whether multiyear contracting, subject to annual funding limitations, is appreciably different from the present authority to enter into one-year contracts with options to renew. Federal agencies have made use of options for many years in lieu of multiyear contracting authority. Mr. Russell testified that the options approach is a one-sided agreement that is grossly unfair to the contractor. The contractor, according to Mr. Russell, is committed to continue performance at specified prices at the Government's option, while the Government has no commitment to the contractor and may elect not to exercise the option at the end of the initial contract or any option year, without any obligations. Again, the Committee believes that multiyear contracting better balances the Government and industry interests.

### B. PROVIDE SELECTION CRITERIA TO ENSURE JUDICIOUS USE

S. 2300 provides the following criteria which must first be met before multiyear contracting authority may be used:

- Appropriations are available for the first year of the multiyear contract and there is reasonable expectation that, during the remaining years the contract is in effect, additional funding will be requested;

- The agency head awarding the multiyear contract determines that such a contract will serve the best interests of the Government by (a) reducing costs, (b) achieving economies in administration, performance, and operation, (c) increasing quality of performance by or service from the contractor, or (d) encouraging effective competition;
- During the proposed contract period there will be a continuing need for the property or services, and such minimum need is expected to remain substantially unchanged;
- The specifications for the property or services being procured are expected to be reasonably stable; and
- The use of multiyear contracting will not inhibit small business participation.

The objective of these selection criteria is to ensure that multiyear contracting will be used judiciously and to safeguard against any possible abuse. Donald Sowle testified at the March 13 hearing that "the criteria specified appear to be adequate to ensure that proper candidates for multiyear contracting are selected." Charles Bowsher, Comptroller General, stated in a letter to Senator Cohen that these selection criteria are consistent with the criteria recommended by the GAO in its 1978 report.

The criteria in S. 2300, which in some respects are more stringent than the criteria in Title 10 governing DoD's multiyear contracting authority, are designed to limit the use of multiyear contracting for civilian agencies to only those circumstances when there is great potential for benefits and less potential for cancellation. The first, third, and fourth criteria relate to the inherent stability of the procurement—i.e., stability in funding, need, and design, respectively—which, if met, minimize the potential for cancellation. These criteria comport with the Commission on Government Procurement's recommendation in its 1972 report that "multiyear contracting properly should be used only to purchase firm and clearly specified requirements, which do not change during the term of the contract."

The second and fifth criteria relate to the potential benefits of multiyear contracting. The second criterion incorporates the recommendation by Dwight Ink, representing the National Academy of Public Administration, that multiyear contracting should be used when "a total analysis of a prospective procurement indicates that this method of contracting will produce a better buy for the Government." This criterion requires the agency head to conduct such an analysis to determine whether multiyear contracting, when compared to conventional annual contracting methods, will serve the Government's best interests. In conducting this analysis, particularly in the implementation stages, contracting officers should issue solicitations requesting comparative quotations for single-year and multiyear quantities to help determine whether the Government is, in fact, benefiting from multiyear contracting.

While satisfying one or more of the conditions under the second criterion—i.e., reducing costs, achieving economies in administration, increasing quality, and encouraging competition—is sufficient, the Committee encourages the civilian agencies to maximize the potential benefits when selecting procurements for multiyear contracting. Since agencies stand to save administrative costs any time

they award a contract on a multiyear basis, the Committee strongly discourages agencies from relying exclusively on the second condition under this criterion for meeting the requirement.

The fifth criterion also relates to potential benefits by ensuring that small business participation is not inhibited through the use of multiyear contracting.

#### C. ESTABLISH CANCELLATION PROVISIONS

S. 2300 establishes cancellation provisions which grant the Government the unilateral right to cancel contract performance in the event appropriated funds are not available for the second or subsequent years of the multiyear contract. Upon cancellation, the contractor is compensated for nonrecurring costs incurred, i.e., production costs which are generally incurred on a one-time basis, such as workforce training or special tooling. S. 2300 provides that such cancellation costs may be paid from appropriated funds which were either originally available for contract performance, available for the acquisition of similar property or services but not otherwise obligated, or made available for the payment of such costs.

The Federal Acquisition Regulation differentiates between "cancellation" and "termination for convenience." Cancellation is a procedure unique to multiyear contracts. Termination for convenience is a procedure which applies to any Government contract, including multiyear contracts. As contrasted with cancellation procedures, termination can be effected at any time during the life of the contract and can be for the total quantity or a partial quantity, whereas cancellation is commonly effected between fiscal years and must be for all subsequent fiscal years' quantities.

The issue was raised at the March 13 hearing whether civilian agencies should be required to front fund prospective cancellation costs in the first year of the multiyear contract. According to several contracting officials cited in the GAO's 1978 report:

A requirement to fully fund cancellation ceilings from appropriations would severely reduce the effectiveness of multiyear contracting as a procurement tool by discouraging its use. Officials at OFPP stated that only a small percentage of multiyear contracts are cancelled. Consequently, a full funding of cancellation ceilings would unnecessarily tie up appropriated funds and should not be required.

Although the Office of Management and Budget had some concerns over the funding of multiyear contracts, both Mr. Sowle and Mr. Kline agreed that, from a procurement point of view, requiring front funding for cancellation liabilities would compromise the effectiveness of multiyear contracting. Mr. Sowle stated, in fact, that such a requirement would "tend to destroy the impact that multiyear contracting would have," and added that the Defense Department is not required to fund its cancellation liabilities.

The Committee believes that, considering the types of recurring, common-use goods and services that the civilian agencies will be procuring on a multiyear basis, the need to cancel contract performance should be infrequent. If a contract is cancelled, moreover,



the nonrecurring costs associated with these goods and services should be minimal.

## VI. IMPLEMENTATION

To ensure effective and uniform implementation, the Committee recommends that the Office of Federal Procurement Policy—the central procurement policy office in the Executive branch—should take the lead in monitoring the use of this new authority and fostering the exchange of ideas and experiences among the agencies. The OFPP should consider establishing an inter-agency task group on multiyear contracting for these purposes.

The Committee also recommends that the OFPP, working together with the General Services Administration, should incorporate management controls in the Federal Acquisition Regulation to ensure proper use of this broadened authority. While the criteria in S. 2300 are intended to provide guidance in the selection of multiyear contract candidates, these criteria are not, by themselves, a guarantee against misuse. Proposed management controls should (1) require a determination and finding for using multiyear contracting, and (2) require that multiyear contracts above an established threshold be reviewed by the agency's procurement executive.

Taken together, statutory guidance, regulatory controls, and management oversight should go far to ensure effective and uniform implementation. Government contracting, however, comprises a series of judgment calls which cannot always be legislated, regulated, or managed. Appropriate use of multiyear contracting, therefore, will depend as much on improved training of the procurement workforce. As Senator Cohen stated at the March 13 hearing, "we ought not only focus upon the reforms in the process, but the personnel who will implement these reforms."

The Committee recommends that the Federal Acquisition Institute, now a part of GSA, should coordinate this training program to instruct agency procurement personnel in how to: (1) select candidates for multiyear contracting, (2) conduct the initial market research which precedes the formulation of solicitations, (3) obtain comparative quotations based on single-year and multiyear quantities, (4) provide incentives for greater competition both at the prime and subcontractor levels, and (5) assess what would constitute a reasonable cancellation charge in the event the contract cannot be continued.

For many civilian agencies, multiyear contracting is new and untested. While the potential benefits are great, inexperience may also lead to potential problems. The Committee therefore recommends that those agencies inexperienced in multiyear contracting should first conduct pilot programs to ensure appropriate use of this new authority.

## VII. CONCLUSION

The Committee has thoroughly considered S. 2300, the Civilian Multiyear Contracting Act, and has determined there is a need to extend multiyear contracting authority government-wide. This determination is based on widespread support for multiyear contract-



ing throughout the procurement community, the prospective uses by civilian agencies, and the potential benefits to be gained. The Committee recognizes, however, that multiyear contracting is not appropriate for all procurements, and believes that S. 2300 sets forth sufficient guidelines to ensure judicious use of this broadened authority.

## VIII. SECTION-BY-SECTION ANALYSIS

### SECTION 1

The short title of this bill is the Civilian Agency Multiyear Contracting Act of 1984.

### SECTION 2

Section 2 amends title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 *et seq.*) by adding after section 305 (41 U.S.C. 255) a new section 306 of Multiyear Contracts.

Section 306(a) defines "multiyear contract" to mean a contract in effect for a period not exceeding five years.

Section 306(b) establishes the following criteria which must be met before an agency head may enter into a multiyear contract:

First, appropriations are available for the first year of the multiyear contract, and there is a reasonable expectation that, during the remaining years the contract is in effect, additional funding will be requested (section 306(b)(1)).

Second, the agency head awarding the multiyear contract determines that: (A) the contract will serve the best interests of the Government by reducing costs, achieving economies in administration, performance and operation, increasing quality, or encouraging competition; (B) during the proposed contract period, there will be a continuing need for the property or services, and such minimum need is expected to remain substantially unchanged; (C) the specifications for the property or services being acquired are expected to be reasonably stable; and (D) the multiyear contract will not inhibit small business participation (section 306(b)(2)).

Section 306(c) states that a multiyear contract may include a provision which makes performance under the contract for the second and subsequent years contingent on appropriations for such years, and a provision for the payment of a reasonable cancellation charge to the contractor if the performance of the multiyear contract is cancelled.

Section 306(d) provides that a multiyear contract shall be cancelled if appropriated funds are not available. In such case, the cost of the cancellation shall be paid from appropriated funds which were either originally available for performance of the contract, currently available (but not otherwise obligated) for the acquisition of similar property or services, or made available for the payment of such cost.

Section 306(e) states that this legislation was not intended to modify or affect any other provision of law which authorizes multiyear contracting, and does not authorize an agency head to acquire property or services by means of a multiyear contract unless

such agency head is otherwise authorized to acquire such property or services.

### SECTION 3

Section 3 sets the effective date of this legislation at contracts entered into after September 30, 1984.

### IX. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, D.C., April 25, 1984.

Hon. WILLIAM V. ROTH, Jr.,  
*Chairman, Committee on Governmental Affairs, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 2300, the Civilian Agency Multiyear Contracting Act of 1984, as ordered reported by the Senate Committee on Governmental Affairs, April 9, 1984. Enactment of this legislation could produce significant savings to the federal government, possibly reaching several hundred million dollars or more per year. However, there is insufficient data to develop a precise estimate.

The bill amends the Federal Property and Administrative Services Act of 1949 to allow multiyear contracting by civilian agencies in certain cases. Under current law, multiyear contracting may only be used when no-year or multiyear funds are available. While the Department of Defense (DoD) now has statutory authority to enter into multiyear contracts with one-year money, civilian agencies are restricted from entering into contractual obligations in excess or advance of appropriations. The bill stipulates that multiyear contracts not be for a period of more than five years; that such a contract be determined to serve the government's best interests by reducing costs, promoting economies, increasing quality, and encouraging competition; that appropriations are available for the first year of the contract; that there will be a continuing need for the services; that the specifications for the property or services are stable; and that use of the multiyear contract will not inhibit small business participation.

The General Accounting Office (GAO) has reported that reduced costs to the federal government from multiyear contracting could result from greater price discounts given by vendors for multiyear contracts, the ability of contractors to recover costs over a longer time period, reduced administrative costs, economies of scale and increased productivity from a stable work force. However, cancellation costs could offset potential savings. The General Services Administration (GSA) has estimated possible savings of up to \$200 million, or about 12 percent of its procurement costs, while the Office of Federal Procurement Policy (OFPP) estimates that civilian procurement costs can be reduced by 15 to 20 percent when multiyear contracting is used.

Significant savings from multiyear contracting appear more likely in certain categories of federal procurement than in others. These categories include supplies and ongoing services (such as pro-

tection, maintenance, cleaning and trash removal), as well as the leasing of automatic data processing and telecommunications equipment. Total procurement by nondefense agencies in fiscal year 1982 was about \$30 billion. We cannot presently estimate how much of this amount would have been amenable to multiyear contracting, but the potential savings are significant. For example, if 10 percent of this amount could have been changed to a multiyear basis under this bill, and if savings from multiyear contracting were 15 percent, total savings would have amounted to about \$400 million in 1982.

Enactment of this legislation will not affect the budgets of state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER,  
*Director.*

#### X. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 2300, as well as the impact of the bill on personal privacy.

S. 2300, as reported, contributes to the procedural streamlining needed in Government contracting by extending multiyear contracting authority government-wide. According to the Administration's proposal for a Uniform Federal Procurement System, greater use of multiyear contracting will "reduce procurement costs and greatly reduce the paperwork burden of both Government and contractor."

The regulatory impact of S. 2300 should be minimal since the Federal Acquisition Regulation (FAR), effective April 1, 1984, already covers multiyear contracting for those agencies authorized to contract on a multiyear basis. S. 2300 would bring civilian agencies under this coverage. The Committee has recommended that the FAR be amended to implement additional management controls to ensure the judicious use of this broadened authority.

The Committee has also determined that S. 2300 will have no significant impact on the privacy of individuals or firms which do business with the Federal government.

#### XI. COMMITTEE VOTE

In compliance with paragraph 7(c) of Rule XXVI of the Standing Rules of the Senate, the vote of the Committee on this legislation was as follows:

Final passage: Ordered reported, 13 yeas; 0 nays.

YEAS (13)

NAYS (0)

Cohen  
Rudman  
Levin  
Glenn  
Cochran  
Stevens  
Sasser

Percy  
Eagleton  
Danforth  
Pryor  
Mathias  
Roth

## XII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### TITLE 41—PUBLIC CONTRACTS

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#### SUBCHAPTER IV—PROCUREMENT PROVISIONS

\* \* \* \* \*

#### § 255. Advance or Other Payments

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#### § 256. *Multiyear Contracts*

(a) *For the purposes of this section, the term "multiyear contract" means a contract in effect for a period not exceeding five years.*

(b) *Subject to subsection (e), an agency head may enter into a multiyear contract for the acquisition of property or services when—*

*(1)(A) appropriations are available and adequate for the payment for such acquisition for the first fiscal year during which the contract is in effect; and*

*(B) there is a reasonable expectation that, during the period the contract is in effect, such agency head will request funding for the contract at the level necessary to avoid cancellation of the performance under the contract; and*

*(2) such agency head determines that—*

*(A) such a contract will serve the best interests of the Government by—*

*(i) reducing costs under the contracts;*

*(ii) achieving economies in administration, performance, and operation;*

*(iii) increasing quality of performance by or service from the contractor; or*

*(iv) encouraging effective competition;*

*(B) during the proposed contracting period—*

*(i) there will be a continuing or recurring need for the property or services; and*

*(ii) the minimum need for the property or services to be acquired is expected to remain substantially unchanged in terms of rate of production or performance, rate of acquisition, and total quantity or extent of services;*



(C) the specifications for the property or services are expected to be reasonably stable, and the technical risks associated with the acquisition are not excessive; and

(D) such a contract will not inhibit small business concerns from submitting a bid or proposal for such contract.

(c) A multiyear contract authorized by this section may include—

(1) a provision that the performance under the contract during the second or any subsequent fiscal year included in the contract period is contingent on the appropriation of funds for such year; and

(2) a provision for the payment of a reasonable cancellation charge to the contractor if the performance is cancelled pursuant to a provision described in clause (1).

(d)(1) If appropriated funds are not available for expenditure on a multiyear contract during the second or subsequent fiscal year included in the contract period, the performance under the contract shall be canceled.

(2) Any cost of the cancellation of performance under the contract may be paid from appropriated funds which—

(A) were originally available for performance of the contract;

(B) are then currently available for the acquisition of similar property or services and are not otherwise obligated; or

(C) are made available for the payment of such costs.

(e)(1) Nothing in this section is intended to modify or affect any other provision of law which authorizes multiyear contracting.

(2) This section does not authorize an agency head to acquire property or services by means of a multiyear contract unless the agency head is otherwise authorized by law to acquire such property or services.











